

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRN-xxxx-x]

RIN XXXX-XXXX

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is proposing to extend, by one year, the dates for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan, and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are proposing this extension to prevent the flood of individual extension requests it has become apparent we will otherwise receive.

DATES: Written comments must be received by [INSERT DATE 20 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., N.W., EPA West, Suite B-102, Washington, D.C. 20460. The docket number for the proposed rule is OPA-2002-001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202-566-0276. You may

copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you \$0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, D.C. metropolitan area, call 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this proposed rule, contact Hugo Paul Fleischman at 703-603-8769 (fleischman.hugo@epa.gov); or Mark W. Howard at 703-603-8715 (howard.markw@epa.gov). U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This proposal concerns a one-year extension of the deadlines in 40 CFR 112.3(a) and (b). The contents of this preamble are as follows:

- I. General Information
- II. Entities Affected by This Rule
- III. Statutory Authority
- IV. Background
- V. Today's Action
- VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in Section V of this notice, the Environmental Protection Agency (EPA or we) is proposing to extend, for one year, the dates in 40 CFR 112.3(a) and (b) for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan

that complies with the newly amended requirements). During the period of the proposed extension, if it is finalized, it will not be necessary for a facility owner or operator to file an extension request pursuant to §112.3(f). Furthermore, for facilities that have already applied for an extension pursuant to §112.3(f), if this extension is finalized, it should render such requests moot.

We will address all public comments in a final rule based on this proposed rule. Any parties interested in commenting should do so at this time.

A. *How Can I Get Copies Of The Background Materials Supporting Today's Proposed Rule or Other Related Information?*

1. EPA has established an official public docket for this proposed rule under Docket ID No. OPA-2002-001. The official public docket consists of the documents specifically referenced in this proposed rule and other information related to this proposed rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave. N.W., EPA West Building, Room B-102, Washington, D.C. 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566-0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr>.

You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 **FR** 38102, May 31, 2002.

B. *How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA will not consider late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the party submitting the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OPA-2002-001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail

address, or other contact information unless you provide it in the body of your comment.

2. *E-mail.* Comments may be sent by electronic mail (e-mail) to Superfund.Docket@epamail.epa.gov. Make sure this electronic copy is in an ASCII format that does not use special characters or encryption. Cite the docket Number OPA -2002-001 in your electronic file. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

4. *By Mail.* Send two (2) copies of your comments to: EPA Docket Center, U.S. Environmental Protection Agency Headquarters (EPA, HQ), Mail Code 5305T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. OPA-2002-001.

5. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West Building Room No. B-102, 1301 Constitution Ave., NW, Washington, DC, 20004. Attention Docket ID No. OPA-2002-001. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

II. Entities Affected by This Rule.

| Industry Category | NAICS Code |
|--|---|
| Crop and Animal Production | 111-112 |
| Crude Petroleum and Natural Gas Extraction | 211111 |
| Coal Mining, Non-Metallic Mineral Mining and Quarrying | 2121/2123/213114/213116 |
| Electric Power Generation, Transmission, and Distribution | 2211 |
| Heavy Construction | 234 |
| Petroleum and Coal Products Manufacturing | 324 |
| Other Manufacturing | 31-33 |
| Petroleum Bulk Stations and Terminals | 42271 |
| Automotive Rental and Leasing | 5321 |
| Heating Oil Dealers | 454311 |
| Transportation (including Pipelines), Warehousing, and Marinas | 482-486/488112-48819/4883/48849/492-493/71393 |
| Elementary and Secondary Schools, Colleges | 6111-6113 |
| Hospitals/Nursing and Residential Care Facilities | 622-623 |

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this

action to a particular entity, consult the person listed in the preceding section entitled “FOR FURTHER INFORMATION CONTACT.”

III. Statutory Authority. 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

IV. Background. On July 17, 2002, at 67 FR 47042, EPA published final amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule. The rule was effective August 16, 2002. The rule included dates in §112.3(a) and (b), by which a facility would have time to amend its SPCC Plan and implement its amended Plan (note that for facilities becoming operational after August 16, 2002, the rule contains dates for the preparation and implementation of a Plan in compliance with the amended rule). In light of new information, we are proposing to extend those dates for a period of one year.

V. Today’s Action. EPA is proposing to extend by one year the compliance dates in §112.3(a) and (b). We are also taking comment on whether a time period other than one year would be more appropriate. We are proposing this extension to allow affected facilities more time to comply with the rule. Since the promulgation of the amendments, the Agency has received numerous complaints that the deadlines in the rule do not allow enough time for the regulated community to undertake the actions necessary to update (or prepare) their Plans in accordance with the amendments. Among the reasons given are that there is a shortage of Professional Engineers (PEs) in some areas, the need for the PE or his agent to make visits at sometimes remote facilities, and the need for the PE to certify that Plans meet requirements for which they have not yet had adequate training. It has also become apparent that unless the Agency takes this action, we will receive an overwhelming number of requests for individual extensions under 40 CFR 112.3(f).

The Agency believes that the present compliance dates are too short, and it would therefore be an inefficient use of scarce Agency resources to address this problem by processing a great number of individual extension requests.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866 - OMB Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this rule is not a “significant regulatory action” because it would only extend for one year the compliance dates in §112.3(a) and (b). It would have no other substantive effect.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

C. Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The R.F.A. generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201 -- the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will temporarily reduce regulatory burden on all facilities by extending for one

year the compliance dates in §112.3(a) and (b). Further, the rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132 - Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This rule would not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045 - Protection of Children from Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. *Executive Order 13211 - Actions that Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTA is inapplicable.

List of Subjects in 40 CFR Part 112 Environmental protection, Fire prevention, Flammable and combustible materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Piping, Reporting and recordkeeping requirements, Tanks, Transfer operations, Water pollution control, Water resources.

Dated:

Christine Todd Whitman, Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 112 - OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 33 U.S.C 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Title 40 Chapter I is amended as follows:

Part 112 – OIL POLLUTION PREVENTION

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

Sec. 112.3 Requirement to prepare and implement a Spill, Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2004, and must implement the amended Plan as soon as possible, but not later than August 18, 2004. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2004, and could reasonably be expected to have a discharge as described in §112.1(b), you must prepare a Plan on or before August 18, 2004, and fully implement it as soon as possible, but not later than August 18, 2004.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2004, and could reasonably be expected to have a discharge as described in §112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *